

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION**

MARY TOWANDA WEBSTER-REED,	)	
individually and as representative of the	)	
Estate of Brandon Lovell Webster, <i>et al.</i> ,	)	
	)	
<i>Plaintiffs,</i>	)	<b>Case No. 7:20-cv-248-FL</b>
v.	)	
	)	
SCOTT ANTHONY COLLINS, <i>in his</i>	)	
<i>individual capacity,</i>	)	
	)	
<i>Defendant.</i>	)	
	)	

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**PLAINTIFFS' CONSENT MOTION FOR APPOINTMENT  
OF GUARDIANS AD LITEM**

Plaintiffs respectfully move the Court, pursuant to Rule 17(c) of the Federal Rules of Civil Procedure, for the appointment of Ryan Smithwick and Richard Parrotte as guardians ad litem for the two minor children of decedent Brandon Webster. In support of this motion, Plaintiffs show unto the Court:

1. This case arises out of the fatal shooting of Brandon Lovell Webster by Defendant Scott Anthony Collins on January 1, 2019. At the time, Defendant Collins was a duly sworn patrolman with the North Carolina State Highway Patrol.
2. Plaintiffs' Amended Complaint alleges the following claims against Defendant Collins: (1) federal constitutional wrongful death claims under 42 U.S.C. § 1983; (2) state law wrongful death claims under North Carolina's wrongful death statute, N.C. Gen. Stat § 28A-18-2; and (3) negligent infliction of emotional distress by Plaintiff Mary Towanda Webster-Reed under North Carolina common law. (Dkt. No. 36 at 7-16.)

3. Under North Carolina law, wrongful death claims are brought by the personal representatives of the decedent's estate, and the proceeds of the claims are distributed to the decedent's beneficiaries according to the Intestate Succession Act. N.C. Gen. Stat § 28A-18-2(a). Plaintiffs Webster-Reed and Reed are the personal representatives of Mr. Webster's estate.

4. For wrongful death claims under 42 U.S.C. § 1983, the North Carolina wrongful death statute likewise determines how the claims are brought and how damages are to be distributed. *Olvera v. Edmundson*, No. 1:01-cv-74-C, 2001 WL 1160351, at \*2 (W.D.N.C. Sept. 21, 2001); *Bowling v. Oldham*, 753 F. Supp. 588, 591 (M.D.N.C. 1990).

5. Mr. Webster was not married at the time of his death, and he was survived by his two children, K.W. and B.W. If there is no surviving spouse, a decedent's children are his heirs under the Intestate Succession Act. N.C. Gen. Stat § 29-15.

6. On March 31, 2022, the parties reached a mediated settlement agreement to resolve this case. A complete settlement agreement is required to effectuate the settlement.

7. Because minor children will be the ultimate recipients of the proceeds of the wrongful death claims, this Court will need to approve the parties' final settlement. See Local Civil Rule 17.1; N.C. Gen. Stat. § 28A-13-3(a)(23).

8. In order to facilitate the Court's review of the settlement, protect the interests of the minor children, and help develop a specific plan for how to distribute funds to the minor children, Plaintiffs request that the Court appoint guardians ad litem for each of the minor children. Specifically, Plaintiffs request that attorney Ryan Smithwick be appointed guardian ad litem for B.W., and that attorney Richard Parrotte be appointed guardian ad litem for K.W.

9. Mr. Smithwick has been licensed to practice law since 2001. He worked as a prosecutor in Mecklenburg County, including on felony cases in Juvenile Court where he worked

directly with guardians ad litem. For the last sixteen years, he has practiced primarily in Superior Court in Brunswick County. He has represented plaintiffs in personal injury cases, product defect cases, and both plaintiffs and defendants in contract disputes, construction claims of lien, real property disputes, will caveats, estate litigation, and partition actions. He has been selected by judges and clerks of court to serve as guardian ad litem in DOT condemnation cases, and other estate/probate-related matters.

10. Mr. Smithwick has been involved with this litigation since its inception, is very familiar with the decedent's family, and is willing to serve as guardian ad litem. Mr. Smithwick has requested a fee for his services at the rate of \$200.00 per hour, which would be paid out of the settlement proceeds.

11. Mr. Parrotte has been licensed to practice law since 2009 and has practiced primarily in Brunswick and New Hanover counties since 2010. As part of his practice, he routinely represents plaintiffs in personal injury cases and also handles some insurance defense work. Over the past five years, he has served as guardian ad litem in at least twenty-five cases. These cases have included real property disputes, guardianship petitions, personal injury settlements involving minors, will caveats, and probate disputes. He is routinely selected by judges, clerks of court, and fellow bar members to serve in these guardian ad litem roles.

12. Mr. Parrotte has reviewed materials from this litigation, and is willing to serve as guardian ad litem. Mr. Parrotte has requested a fee for his services at the rate of \$150.00 per hour, which would be paid out of the settlement proceeds.

13. Following their appointments, Mr. Smithwick and Mr. Parrotte would review the terms of the settlement to ensure it is reasonable and protects the interests of the children. They would work with the minor children and their families to develop plans for the distribution of the

wrongful death proceeds that will best serve the current and future needs of the children. These plans will be incorporated into the final settlement agreement. Plaintiffs will then file a motion for settlement approval with the Court.

14. Plaintiffs' counsel has conferred with Defendant's counsel regarding this motion. Defendant consents to this motion.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion, appoint Ryan Smithwick as guardian ad litem for B.W, and appoint Rick Parrotte as guardian ad litem for K.W. A proposed order is attached for the Court's consideration.

Respectfully submitted this the 24<sup>th</sup> day of May, 2022.

PATTERSON HARKAVY LLP

/s/ Narendra K. Ghosh  
Narendra K. Ghosh, NC Bar No. 37649  
nghosh@pathlaw.com  
Paul E. Smith, NC Bar No. 45014  
psmith@pathlaw.com  
Bradley J. Bannon, NC Bar No. 24106  
bbannon@pathlaw.com  
100 Europa Dr., Suite 420  
Chapel Hill, North Carolina 27517  
(919) 942-5200

/s/ Ira Braswell IV  
Ira Braswell IV, NC Bar No. 41799  
BRASWELL LAW, PLLC  
P.O. Box 703  
Louisburg, NC 27549  
(252) 458-2203

*Counsel for Plaintiffs*